


MEMORANDUM

August 29, 2006

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: ADRIENNE M. BYERS 
Principal Deputy County Counsel
Public Works Division

RE: Joan Lavine v. City of Malibu, et al.
Los Angeles Superior Court Case No. SS 008071

DATE OF
INCIDENT: February 1998

AUTHORITY
REQUESTED: \$30,000


COUNTY Department of Public Works
DEPARTMENT: (Waterworks District No. 29 - 50% and Road Fund - 50%)


CLAIMS BOARD ACTION:

☒ Approve

☐ Disapprove

☐ Recommend to Board of
Supervisors for Approval


_____, Chief Administrative Office
ROCKY A. ARMFIELD


_____, County Counsel
JOHN F. KRATTLI


_____, Auditor-Controller
MARIA M. OMS

on September 5, 2006

SUMMARY

This is a recommendation to settle for \$30,000 a lawsuit filed by Joan Lavine against the City of Malibu ("City"), the County of Los Angeles ("County"), and Waterworks District No. 29 ("Waterworks") for damages to her property in a February 1998 landslide.

LEGAL PRINCIPLES

A public entity is liable in inverse condemnation when it substantially participates in the design, construction, or maintenance of a public work which, as designed and constructed, causes damage to private property.

SUMMARY OF FACTS

Joan Lavine owns a house at 21651 Rambla Vista, which is located on a hill overlooking the intersection of Rambla Vista and Pacific Coast Highway in the City. A portion of the hill's slope abuts Rambla Vista. Historical records indicate that the County approved the development containing the Lavine property in the late 1920's, when the slope was cut to create Rambla Vista.

Waterworks services Ms. Lavine's area, and owns and operates water lines and a meter box along Rambla Vista, as well as a meter box upslope of Ms. Lavine's property on Villa Costera.

In February 1998, landslide movement damaged Ms. Lavine's 3,500 square-foot home. The City issued an order for partial demolition of the structure. Ms. Lavine filed a complaint in July 1998 against the City, the City's building official, the County, and Waterworks for damages and sought injunctive relief to block the City's demolition order (the "*Lavine* lawsuit"). As against the City, Ms. Lavine alleges that the City's building official wrongly designated the house for demolition in violation of her civil rights. (The City later rescinded its order before any demolition work occurred.) Ms. Lavine also contends that the City failed to take steps to stabilize the slope at Rambla Vista, and that the City removed dirt and performed grading along the slope, which was a contributing factor causing the landslide.

As against the County, Ms. Lavine contends that the historical road cut that created Rambla Vista was a substantial contributing factor to the landslide and that the County can be held liable for the landslide damage because the original road cut was made at a time when the area was under the County's jurisdiction. Ms. Lavine also contends that Waterworks' facilities leaked water into the slope, also contributing to the landslide.

In 2004, Ms. Lavine was sued by a neighbor, Lou Adler, after a portion of his driveway slid onto her property (the "*Adler* lawsuit"). Mr. Adler's house is upslope and behind the Lavine property. He contends that the City and Ms. Lavine took actions with respect to the Lavine property which undermined the stability of a portion of his driveway. Mr. Adler did not sue the County or Waterworks. However, in the *Adler* lawsuit, Ms. Lavine has filed a cross-complaint for indemnification against the County, Waterworks, and the City, based on the same allegations set forth in the *Lavine* lawsuit. The *Adler* lawsuit is set before Judge Terry Friedman in Santa Monica. The *Lavine* lawsuit is assigned to Judge Gerald Rosenberg, also in Santa Monica. Although Judge Rosenberg denied Mr. Adler's request to consolidate the cases, the matters have been informally "coordinated" between the two judges.

DAMAGES

Ms. Lavine contends that her property has suffered a loss of fair market value in excess of \$2.5 million. She also seeks the award of experts' and attorneys' fees in the amount of \$400,000.

STATUS OF CASE

The *Lavine* lawsuit was originally set for trial in 2000, and has been continued at least 10 different times by four judges. Between 1998 and 2001, the parties took the depositions of nearly a dozen witnesses, and also engaged in a significant amount of discovery. Since the beginning of the litigation, Ms. Lavine has refused to consider a separate settlement with the County and Waterworks. Given the substantial damages Ms. Lavine was seeking, and her unwillingness to settle with the County for a reasonable amount at any time during the litigation, the County and Waterworks were compelled to bring several motions, including demurrers and a motion for summary judgment, in an effort to extricate themselves from this litigation.

In 2001, the parties attended a mediation, which resulted in an "agreement in principle," consisting of the City conducting exploratory testing to determine whether Ms. Lavine's property could be saved and what it would cost to remediate and to repair the property. The testing took much longer than expected, repair estimates rose, and the negotiations eventually broke down. The parties then geared up again for trial. The trial ultimately was set for August 2005. On the trial date, the Court again pursued settlement discussions, this time including Mr. Adler, his counsel, and his insurer in an effort to settle the *Adler* lawsuit as well.

Working out the details of the proposed *Lavine* settlement has taken several meetings with the judge and all *Adler* and *Lavine* parties and insurers due to the complexity of the City-Lavine portion of the settlement.

Although the last year of negotiations involved mainly the City, Ms. Lavine, Mr. Adler, and their insurers, the Court ordered the County to be present at all court hearings and settlement meetings. In total, the County has incurred approximately \$170,000 in in-house legal fees and expert costs over the eight-year history of this case.

The proposed *Levine* settlement calls for the City to purchase the subject property from Ms. Lavine for \$670,000, with Ms. Lavine to receive a percentage of any proceeds in excess of the City's purchase amount from any later sale of the property by the City. The County and Waterworks would pay Ms. Lavine a total of \$30,000. In light of the proposed *Levine* settlement, which was made subject to the approval of this Claims Board, Judge Rosenberg took the *Lavine* trial off calendar.

The parties have also reached a settlement of the *Adler* case and are presently circulating the *Adler* settlement agreement for signatures. In the proposed settlement, the County would pay \$5,000 in exchange for a dismissal of Ms. Lavine's cross-complaint; the City would perform hillside restoration of Mr. Adler's damaged driveway and contribute monies toward the landscaping of his property, and Ms. Lavine's insurance company would contribute monies to the restoration work. The Court has ordered any party who has not signed the *Adler* settlement agreement by Friday, September 1, 2006, to return to the court.

EVALUATION

The trial of the *Lavine* lawsuit would be heard by the Court as a result of Ms. Lavine's voluntary waiver of a jury. While we believe the preponderance of the evidence will show that neither the historical road cut, nor the actions of Waterworks caused the landslide, we also recognize that the judge could find otherwise. A potential finding of liability, when combined with an award of attorneys' and experts' fees which are recoverable in inverse condemnation lawsuits, as well as the costs to defend the County at trial, would greatly exceed the recommended settlement amount. In light of the substantial costs and risks of proceeding to trial, we recommend that the *Lavine* litigation be settled. We make this recommendation notwithstanding the remote and unlikely possibility that the *Adler* case might not ultimately settle. The Department of Public Works concurs with this recommendation.

APPROVED:



KAREN A. LICHTENBERG
Assistant County Counsel
Public Works Division

AMB:mh